Briefing
Compliance News Affecting Pension Plans
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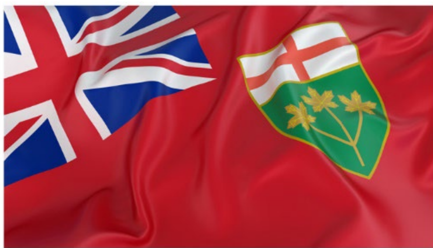

Ontario's Consultation on a New Funding Regime for Multi-Employer Pension Plans

On March 15, 2023, Ontario's Ministry of Finance launched a consultation on proposed regulations for implementing a permanent target benefit framework for Multi-Employer Pension Plans (MEPPs) to replace the Specified Ontario Multi-Employer Plan (SOMEPP) regulations. The current SOMEPP regime expires on January 1, 2024.

The proposed reforms would apply to those plans that apply to convert to target benefits.

This *Briefing* presents an overview of the proposed new funding framework and conversion process, as proposed.

Eligibility

Under the proposal, MEPPs that meet the conditions set out below would be able to apply to the CEO of the Financial Services Regulatory Authority (FSRA) of Ontario to convert exiting benefits to target benefits. We would expect existing SOMEPPs to meet these conditions but would encourage trustees to review their plan to be sure.

- Employer contributions must be fixed in one or more collective agreements or other plan documents.
- The administrator must be authorized to reduce benefits.
- At the end of the previous year, no more than 95 percent of the members of the plan were employed by one employer.
- During the previous year, either at least 15 employers made contributions to the plan or at least 10 percent of members were employed by two or more employers.

Governance

Once target benefit provisions are in force, target benefit plans (TBPs) would be required to establish and maintain a governance policy and a funding policy. The requirements for these policies will be based on Canadian Association of Pension Supervisory Authorities (CAPSA) guidelines.

Funding and governance policies would need to be filed with FSRA within 60 days after the effective date of conversion to target benefits and would have to be reviewed every three years. As such they are automatically available to Plan members on request.

Member communications

The new framework would include additional disclosures and information that must be made available to members, including disclosures in communications to new members, annual statements and communications regarding plan amendments.

Commuted values

All MEPPs that can reduce benefits would be permitted to determine commuted values (CVs) using the Canadian Institute of Actuaries' Standards of Practice. The Standard of Practice allows CVs to be determined using the going-concern discount rate.

However, while the Standards of Practice specifically allow a plan to reduce CVs if the plan is less than 100 percent funded, the consultation paper specifically prohibits it.

Going-concern funding rules

The proposed funding framework would permanently eliminate solvency funding for plans that convert to target benefits. However, the Ministry of Finance has proposed introducing the additional going-concern funding requirements noted below.

Provision of Adverse Deviations

Plans would be required to add a margin to their normal cost and ensure that their contributions can meet the existing funding requirements plus the margin. The margin is called a Provision for Adverse Deviations (PfAD). The PfAD would be a percentage of the normal cost.

The Pfad would be the sum of two components: (1) a percentage component based on the plan's asset mix and (2) a percentage component based on the plan's going-concern discount rate, which would be included only if the discount rate exceeds a benchmark discount rate defined in the regulations.

The result is a PfAD that will vary significantly from plan to plan and could, in some cases, result in benefit reductions. Plans most at risk will have a high non-fixed income component in their asset mix and/or an aggressive discount rate relative to the new benchmark.

Contribution sufficiency test

Under the proposed framework, the contribution sufficiency test would require contributions to the plan to be no less than the sum of:

- The normal cost of the plan
- The PfAD in respect of the normal cost
- Going-concern special payments to fund an increase in liability and the associated PfAD on that increase in respect of plan amendments
- Going-concern special payments determined in a valuation report not in respect of a plan amendment

Plans would not be permitted to use surplus to fund the normal cost or PfAD in respect of the normal cost.

Plans that fail the contribution sufficiency test would be required to take action to pass the test, such as increasing contributions or reducing benefits.

The details here, particularly around the PfAD, will require each plan to look at its own circumstances to establish the impact of the funding regime.

Special payments

Special payments, as referred to above, will continue to be calculated to remove deficits over a 12-year period. Further, each schedule of special payments will continue until that element of deficit is fully funded. In particular, there will be no "fresh-start" approach as applies to single-employer plans.

In addition, where positive experience eliminates part of a prior deficit, the balance of that deficit must continue to be funded at the same annual rate, albeit the number of required annual payments will reduce.

Benefit improvements

Under the proposed framework, benefit improvements would be permitted regardless of the plan's going-concern funded level. However, any increase in the going-concern liabilities and PfAD would be required to be funded over 10 years.

Previously reduced benefits would be prioritized over other benefit improvements.

Benefit reductions

The Ministry of Finance will be issuing legislation that will set out rules regarding benefit reductions.

Conversion

The *Pension Benefits Act* (PBA) sets out the process and timelines for plans to convert to target benefits. Plans would have five years from the effective date of the proposed framework to apply for consent to convert. However, any valuation filed with an effective date after 1 January 2024 will have to comply with solvency funding requirements if the plan is not, by the valuation date, established as a TBP.

Applications for consent to convert would be required to contain the following documentation:

- Copies of all notices to members and beneficiaries
- A copy of the proposed plan amendment reflecting conversion
- A statement certifying that the administrator has consulted with any applicable trade union
- A statement from the administrator certifying that the eligibility criteria outlined in the PBA have been satisfied

In addition to notices to members and beneficiaries, administrators would be required to provide notices to all parties affected by the conversion, including participating employers and any trade union that represents members of the plan.

Transition

The effective date of conversion would have to be within 12 months of the date the CEO of the FSRA consents to the proposed conversion. Plans would be required to file a valuation report within nine months of the conversion date.

In the five years following conversion of benefits to target benefits, if the contribution requirements determine under the proposed framework are greater than they would have been had the plan not converted, plans will only be required to fund on the lower amount.

Multi-jurisdictional plans

Plans with members outside Ontario will not be permitted to be a target benefit plan if more than 10 percent of their membership is working in provinces that do not allow MEPPs to reduce benefits.

Action item

The Ministry of Finance is accepting comments on the proposed regulations until June 30, 2023. Additional regulations for consultation are expected and will be posted on the Ontario Regulatory Registry.

There is much here that causes concern. Additionally, without further details or draft regulations, the implications of certain proposed changes are unclear at the moment. Most notably, the additional disclosures for plan amendments, benefit reductions and use of surplus to prioritize prior reductions when improving benefits and limitations for multi-jurisdictional plans require additional information to better understand their impact.

Each plan will need to start looking at how this new regime may impact it and determine the best course of action, based on specific funding analysis, assuming these proposals become legislation.

Segal can be retained to work with plan sponsors and their legal counsel on determining the implications. For assistance or if you have questions about the regulations and the law, contact your Segal consultant or get in touch via our website.

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